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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHERRILL FOSTER, HOWARD FOSTER, SHEILA  
BURTON, and MINNIE BURTON,

Plaintiffs,

vs.

SHANNON EDMONDS, LORI TYLER, COUNTY  
OF LAKE, CITY OF CLEARLAKE, and DOES 1  
through 100,

Defendants.

Case No. C-07-5445-WHA

**DEFENDANT SHANNON EDMONDS'  
NOTICE OF MOTIONS AND MOTIONS  
FOR JUDGMENT ON THE PLEADINGS  
AND TO DISMISS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

F.R.C.P., Rule 12(c); 28 USC §1367(c)(3)

Hearing Date: September 18, 2008  
Hearing Time: 8:00 a.m.  
Courtroom: 9, 19<sup>th</sup> Floor

The Honorable William Alsup, presiding

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

**PLEASE TAKE NOTICE** that on September 18, 2008, at 8:00 a.m., or as soon thereafter as the matter may be heard, defendant Shannon Edmonds will move the above entitled Court for judgment on the pleadings as to the First and Second Counts of plaintiffs' First Amended Complaint for Damages and for Injunctive Relief and, if granted, to dismiss the remaining counts for lack of subject matter jurisdiction. This motion is made on the grounds that the First and Second Counts of the First Amended Complaint fail to state any cognizable federal claim against defendant Edmonds under 42 USC § 1983 and, absent any such cognizable claim, there is no basis for pendent jurisdiction over plaintiffs' remaining state law claims. This motion is based upon this Notice of Motions and Motions for Judgment on the Pleadings and to Dismiss; Memorandum of Points and Authorities; and the pleadings,

1 records and files in this case.

2 DATED: August 8, 2008

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation

By /S/  
Stephen F. O'Neill, Esq.  
Attorneys for Defendant  
SHANNON EDMONDS

### 8 MEMORANDUM OF POINTS AND AUTHORITIES

9 Plaintiffs invoke Federal jurisdiction in this action by including inadequately plead claims for  
10 violation of their rights under 42 U.S.C. §1983 by private individuals who were not acting under color  
11 of law. On May 23, 2008, this court granted the Rule 12(b)(6) motions of the public entity defendants  
12 and, following plaintiffs' failure to amend their complaint as to those entities, entered on July 11, 2008,  
13 an order granting final judgment as to the public entity defendants in this action. Defendant Shannon  
14 Edmonds now moves for judgment on the pleadings under FRCP, Rule 12(c) on the grounds that  
15 plaintiffs have failed to properly allege that defendant acted under color of law as required to state a  
16 claim under 42 U.S.C. §1983 and, absent such claims, this Court has discretion to dismiss plaintiffs'  
17 pendent state law claims under 28 U.S.C. §1367(c)(3).

#### 18 I. SUMMARY OF RELEVANT FACTS

19 The gravamen of plaintiffs' 42 U.S.C. §1983 claims are: Count 1: that plaintiffs' decedents were  
20 killed by Edmonds in an allegedly racially motivated incident; and, Count 2: that local law enforcement  
21 personnel tolerated the drug dealing activity by Edmonds and did not prosecute him after the incident.

22 As relevant to this motion, the facts plead by plaintiffs in the First Amended Complaint allege  
23 the following acts and/or actions by Defendants Edmonds and Tyler:

- 24 1. When plaintiffs' decedents came to defendants Edmonds' and Tyler's residence  
25 on December 7, 2005, a fight broke out and decedents allegedly fled the scene.  
26 [Plaintiffs' First Amended Complaint (hereinafter, "FAC"), ¶¶13-14.]
- 27 2. As decedents were fleeing, defendant Edmonds allegedly shot and killed them.  
28 [FAC ¶¶13-14.]

3. Defendants Edmonds and Tyler had not previously taken steps to prevent persons from attempting to steal marijuana or drugs from their home despite previous attempted robberies. [FAC ¶15.]

Perhaps more important than the facts plaintiffs' actually allege, are the facts they fail to allege:

1. Plaintiffs do not allege that either defendant Edmonds or Tyler was employed by any public entity or was acting in the course and scope of any such employment or agency at the time of the incident.
2. Plaintiffs do not allege that either defendant Edmonds or Tyler was acting on behalf of any public entity at the time of the incident.
3. Plaintiffs do not allege that either defendant Edmonds or Tyler was effecting any law, statute, or public policy or custom at the time of the incident.
4. Plaintiffs do not adequately allege that either defendant Edmonds or Tyler was acting in concert or as part of a conspiracy with any public entity in the shooting.

Rather, it is clear from the allegations of the First Amended Complaint that this incident was the result of a private dispute between and among private persons which neither involved nor was intended to involve any public entity or purpose. These allegations are insufficient to state a claim for relief against defendant Edmonds under 42 U.S.C. §1983 and defendant is entitled to judgment in his favor on the first and second counts of the First Amended Complaint and this court should exercise its discretion to dismiss the remaining pendant claims for lack of jurisdiction.

## **II. LEGAL AUTHORITY AND ARGUMENT**

This court has already entered judgment in favor of both public entities allegedly involved in the death of plaintiffs' decedents following plaintiffs' failure to amend their First Amended Complaint to allege sufficient facts to support their claim that the deaths resulted from alleged state action. Said requirement also applies to their claims against the individual, private defendants, Edmonds and Tyler. Further, should this court enter judgment in favor of defendant Edmonds on the sole, Federal question claims in this litigation, defendant Edmonds respectfully requests this court to dismiss the pendent state law claims for lack of subject matter jurisdiction..

**A. Plaintiffs Do Not Allege Facts Sufficient to Support Their Claim that Defendant Edmonds Acted Under Color of Law in Derogation of Their Rights and Defendant Is Entitled to Judgment in His Favor on Said Counts**

As set forth in *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 150 (1970):

“The terms of § 1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the “Constitution and laws” of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.” This second element requires that the plaintiff show that the defendant acted “under color of law.”

Defendant Edmonds contends that plaintiffs have not and cannot truthfully plead sufficient facts to satisfy the second element of this test, that is, that defendant acted under color of law.

Further, to state their claims against a private individual such as defendant Edmonds, the “color of law” element requires that plaintiffs properly allege both that defendant acted pursuant to some known law, statute or custom, and that his actions are properly attributable to a public entity. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978). Plaintiffs’ 42 USC §1983 claims in the First Amended Complaint fail to meet either of these requirements.

First plaintiffs’ First Amended Complaint fails to properly allege sufficient facts to support any inference that decedents were killed pursuant to any law, statute or local ordinance or that defendant Edmonds had knowledge of such law, statute or ordinance at the time of the act. Clearly, there is no law, statute or ordinance providing for the shooting of plaintiffs’ decedents under the circumstances alleged in the First Amended Complaint and none is alleged. Just as clearly, defendant Edmonds could not have been acting with knowledge of any such non-existent law in allegedly shooting plaintiffs’ decedents. Defendant Edmonds is entitled to judgment on the pleadings in his favor and against plaintiffs on the claims under 42 USC §1983. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978); *Adickes v. S. H. Kress & Co.*, 298 U.S. 144, the Supreme Court.

Even assuming that plaintiffs have adequately alleged that defendant Edmonds acted pursuant to a known law, the First Amended Complaint does not properly allege facts sufficient to permit the attribution of defendant Edmonds’ alleged conduct to any public entity. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978). Plaintiffs do not allege that any public entity, agent or employee was present at the scene or involved in the circumstances leading up to the shooting nor do they allege any other

1 facts sufficient to attribute the conduct of defendants Edmonds or Tyler to any state actor. Further, even  
 2 given the opportunity to amend the First Amended Complaint to allege sufficient facts to implicate  
 3 either the City of Clearlake or the County of Lake in the deaths, plaintiffs failed to do so.

4 Plaintiffs' First Amended Complaint fails to allege facts sufficient to state a cause of action  
 5 under 42 U.S.C. §1983 and defendant Shannon Edmonds is entitled to judgment on the pleadings as to  
 6 the First and Second Counts of plaintiffs' First Amended Complaint.

7  
 8 **B. This Court Should Exercise Its Discretion to Dismiss the Pendent State Law**  
 9 **Claims for Lack of Subject Matter Jurisdiction Following Entry of**  
 10 **Judgment on the Federal Question Claims in Favor of Defendant Edmonds**

11 Plaintiffs invoked the jurisdiction of this court pursuant to 28 U.S.C. §§1331 and 1343(a)(3) and  
 12 (4) based upon their claims under 42 U.S.C. §1983. In addition to these Federal question counts,  
 13 plaintiffs purported to allege additional state law claims for negligence (count 3), battery (count 4), and  
 14 for California Civil Code violations (count 5). Based upon the allegations of the original complaint,  
 15 plaintiffs evidently invoked the jurisdiction of this court over their additional claims based on  
 16 supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

17 However, should this court enter judgment on plaintiffs' 42 U.S.C. §1983 claims, the Court has  
 18 broad discretion to dismiss the remaining state law claims pursuant to 28 U.S.C. §1367(c)(3). *Foster*  
 19 *v. Wilson*, 504 F.3d 1036 (9<sup>th</sup> Cir. 2007). Section 1367(c)(3) provides, in pertinent part:

20 “(c) The district courts may decline to exercise supplemental jurisdiction over  
 21 a claim under subsection (a) if - ...

22 “(3) the district court has dismissed all claims over which it has  
 23 original jurisdiction... .”

24 Dismissal of plaintiffs' state law claims following entry of judgment on the pleadings on the  
 25 federal question counts will not result in any substantial prejudice to plaintiffs and will not produce any  
 26 waste of judicial resources and/or economy. This case remains in its early stages and no actual  
 27 discovery has occurred. The parties have been awaiting the conclusion of the related state criminal  
 28 prosecution of plaintiffs' decedents' alleged co-conspirator on charges arising from the home invasion  
 robbery which instigated this incident. No depositions have been taken and no written discovery has

1 been propounded by any party<sup>1</sup>.

2 In addition, plaintiffs can obtain a full and fair trial on the merits of their state law claims in  
3 state court. The remaining claims raise only issues of state law which, though involving very  
4 substantial factual disputes, do not implicate any significant federal laws. In fact, plaintiffs' Fifth count  
5 specifically seeks recovery under California statutory law. Clearly, California state law would  
6 predominate over any Federal issues on plaintiffs' remaining claims. Similarly, this case does not  
7 present any unusual circumstances or factors which would necessitate or support Federal jurisdiction.  
8 A California state court with proper jurisdiction over plaintiffs' remaining state law claims can and  
9 would fairly and economically resolve these claims.

10 Should this court grant defendant Shannon Edmonds' motion for judgment on the pleadings as  
11 to plaintiffs' federal question claims, there is no compelling basis for retaining this matter in Federal  
12 Court. Defendant Edmonds respectfully requests this court to dismiss plaintiffs' state court claims,  
13 without prejudice pursuant to 42 U.S.C. §1367(c)(3).

#### 14 CONCLUSION.

15 In summation, plaintiffs' First Amended Complaint fails to contain sufficient facts to state a  
16 claim against defendant Edmonds under 42 U.S.C. §1983 because there are no substantial facts or  
17 allegations that he was acting "under color of law" at the time of the alleged incident. Upon granting  
18 judgment as to the federal question claims, there would be no compelling basis for this court to retain  
19 jurisdiction over the purely state law claims and defendant Edmonds would respectfully request this  
20 court to dismiss said claims without prejudice.

21 DATED: August 8, 2008

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation

22  
23 By /S/  
24 Stephen F. O'Neill  
25 Attorneys for Defendant  
26 Shannon Edmonds  
27

28 <sup>1</sup>Pursuant to this court's order, the parties exchanged initial Rule 26(a) disclosures.